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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: **SEP 12 2003**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409.

ON BEHALF OF APPLICANT: [REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record indicates that the applicant was issued a United States passport on October 23, 2000, listing the applicant's name as [REDACTED] and reflecting a birth date of August 16, 1981, and birth place as Palau. The record additionally contains a birth certificate submitted by the applicant stating that his name is [REDACTED]

[REDACTED] and that he was born on August 16, 1981, in Palau. The record contains documentation indicating that the father's name written on the applicant's birth certificate [REDACTED] of New Zealand) was written in error, and that the applicant's actual father is [REDACTED]

[REDACTED] a U.S. citizen born on August 2, 1954. The record contains documentation that the applicant's mother is [REDACTED] and that she is not a U.S. citizen. The record additionally contains documentation indicating that [REDACTED] was in the military in the early 1980s and that he was stationed in Palau during that time. The record indicates that [REDACTED]

[REDACTED] and [REDACTED] married on July 6, 1982, and that the applicant's mother was admitted to the United States (U.S.) on a fiancé visa on June 23, 1982, accompanied by the applicant. She became a permanent resident in 1986. The record further indicates that the applicant was formally adopted by [REDACTED]

and [REDACTED] on October 23, 1991, in Taylor County, Florida, in order to rectify the error contained on the applicant's birth certificate regarding who his father is. The record also contains a DNA report indicating a 99.84% likelihood that [REDACTED] is the biological father of [REDACTED]. The applicant seeks a certificate of citizenship pursuant to sections 301 and 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401 and 1409, based on the claim that he acquired U.S. citizenship at birth through his U.S. citizen father.

The district director concluded that the applicant was ineligible for derivative U.S. citizenship status because he failed to establish that [REDACTED] and [REDACTED]

[REDACTED] were the same person or that his natural father was [REDACTED]. The district director concluded further that the applicant was ineligible for U.S. citizenship based on his adoption by a U.S. citizen father because he was over 18 when he filed his citizenship application and because he failed to establish that his status was ever adjusted to that of a legal permanent resident.

In support of his decision, the district director referred to 8 C.F.R. § 341.1, which states in part that:

The application for a Certificate of Citizenship . . . shall be supported by documentary and other evidence essential to establish the claimed citizenship, such as birth, marriage, death, and divorce certificates.

The district director also referred to 8 C.F.R. § 342.2(c) which states in pertinent part that:

The burden of proof shall be upon the claimant . . . to establish the claimed citizenship by a preponderance of evidence.

On appeal, the applicant, through counsel, asserts that the evidence establishes that the applicant's natural father is [REDACTED] a U.S. citizen, and that the applicant meets the requirements for obtaining derivative U.S. citizenship.

The AAO agrees that 1) the record establishes by a preponderance of the evidence that the applicant's natural father is [REDACTED], 2) that [REDACTED] meets the physical presence requirements set forth in section 301(g) of the Act, and 3) that the applicant qualifies for U.S. citizenship under section 309 of the Act.

The applicant in this case presented sworn affidavits from [REDACTED] stating that the applicant's birth certificate contained an error regarding the name of the applicant's father and regarding the applicant's first name. [REDACTED] stated that they had tried to correct the error through the courts in Palau, but that they had been advised to formally adopt the applicant instead.

The AAO notes that the applicant's birth certificate states that his last name is [REDACTED] a name completely different from the father's or mother's names listed on his birth certificate, but a name identical to his claimed natural father's [REDACTED] last name. The AAO further notes that the evidence clearly reflects that [REDACTED] was in Palau during the time of the applicant's conception and birth. Moreover, the evidence indicates that the applicant's mother, as listed on his birth certificate, married [REDACTED] in the U.S. in 1982, a year after the applicant's birth. The record additionally contains evidence that the applicant's mother's 1986, Form I-485, legal permanent resident immigration documentation, lists her son as [REDACTED] born August 16, 1981 in Palau. The 1991 Florida Court Adoption Order also refers to the fact that testimony was heard regarding

errors in the applicant's birth certificate pertaining to name of his actual father as well as to the applicant's first name.

In addition to the above documentation, the applicant submitted evidence that he was issued a U.S. passport by the Department of State in October 2001. The AAO notes that pursuant to Interim rules and Regulations set forth by the Immigration and Naturalization Service ("Service", now the Bureau of Citizenship and Immigration Services, "Bureau") on June 13, 2001, regarding applications for certificates of citizenship for children born outside of the U.S., the Service wrote that a parent or guardian could apply for a U.S. passport from the Department of State as an alternative to applying for a certificate of citizenship for their child under interim regulations and rules. See 66 FR 32138 (June 13, 2001). The fact that the applicant obtained a U.S. passport will therefore be accorded considerable weight by the AAO in assessing whether or not the applicant has established U.S. citizenship by a preponderance of the evidence.

Section 301(g) of the Act states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government . . . by such citizen parent . . . honorably serving with the Armed Forces of the United States . . . may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

The evidence in the record establishes that [REDACTED] is a U.S. citizen and that he meets the physical presence requirements set forth in section 301(g) of the Act. As noted above, the AAO finds that the evidence in the record also establishes that [REDACTED] is the applicant's natural father.

Section 309(a) of the Act, 8 U.S.C. § 1409, states in pertinent part that:

(a) The provisions of paragraph . . . (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

The AAO finds that the applicant has established that he meets the requirements set forth in section 309 of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in this case has met his burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.